

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

IN RE:

Earl Diamond,

Debtor,

Case No. 19-12694

Judith E. Levy

United States District Judge

Earl Diamond,

Bankruptcy Case No. 19-31316

Hon. Joel D. Applebaum

Appellant,

v.

Genesee County Land Bank,

Appellee.

**ORDER DISMISSING CASE FOR INSUFFICIENT RECORD ON  
APPEAL**

On September 13, 2019, Debtor/Appellant Earl Diamond appealed United States Bankruptcy Judge Joel D. Applebaum's order titled "Order Denying Debtor's Motion to Set Aside Order Vacating Interim Order Granting Debtor's Motion to Impose Automatic Stay and Lifting Automatic Stay." (ECF No. 1.) Judge Applebaum's order denied

Appellant's motion for reasons set forth on the record during a September 4, 2019 hearing in bankruptcy court. (*Id.*)

On September 15, 2020, the Court ordered Appellant to provide a supplemented record on appeal by October 19, 2020, because the October 15, 2019 record consisted solely of Appellant's Statement of Issues and did not even include a record of the underlying bankruptcy judge's order being appealed. (ECF No. 3.) Because neither the existing record, nor the parties' responses or Appellant's subsequent motions,<sup>1</sup> provide any basis for evaluating this appeal, the Court warned that failure to "submit a complete record on appeal, including a transcript of the September 4, 2019 hearing before Judge Applebaum . . . will result in a dismissal of this case." (ECF No. 27, PageID.129.)

An insufficient bankruptcy record on appeal is grounds to dismiss the case. *Conn Aire, Inc. v. J.C. Leasing*, 878 F.2d 1436 (Table), at \*2 (6th Cir. July 13, 1989). However, courts should not "dismiss an appeal for insufficient designation [unless] the omission arose from negligence or

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<sup>1</sup> "Motion to have Appellee Genesee County Landbank state their legal fees and costs to litigate case," (ECF No. 8), "Motion for appellee to maintain 3115 Dale Ave, Flint MI 48506, have it brought up to code, and not to sell, destroy or dispose of property until final judgment," (ECF No. 12), "Objection to dismiss case and non-hearing motion not to dismiss case," (ECF No. 15), "Motion for Summary Judgment," (ECF No. 18), and "Request for relief." (ECF No. 26.)

indifference of appellant and, where good faith is shown . . . the court, in order to avoid injustice, may, on a proper suggestion or its own motion, direct that the omission be corrected by a supplemental transcript.” *Id.* (citing *Island Creek Coal Co. v. Local Union No. 1827*, 568 F.2d 7 (6th Cir. 1977)).

The Court gave Appellant a month—until October 19, 2020—to supplement the record on appeal. (ECF No. 27.) As of October 28, 2019, the Court has not received an updated record or any other communication. While the Court was unwilling to infer negligence or indifference on the part of Appellant at the time of its September 15 Order, the Court now makes that finding of indifference. Accordingly, this case is DISMISSED. *Conn Aire, Inc.*, 878 F.2d at \*2.

IT IS SO ORDERED.

Dated: October 29, 2020  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court’s ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 29, 2020.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager